

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 703 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed
to see the judgements?No

2. To be referred to the Reporter or not?

No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

STATE OF GUJ.

Versus

ASANDAS K MANVANI (VENDER)

Appearance:

Mr.L.R. Pujari, APP, for the appellant.
MR CH VORA for Respondent No. 1
Mr.K.R. Raval for respondents Nos. 3 and 4

CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 17/10/97

ORAL JUDGEMENT

By means of filing this appeal under Section 378 of the Code of Criminal Procedure, 1973, the State of Gujarat has challenged the legality and validity of judgment and order dated March 8, 1990, rendered by the learned Judicial Magistrate (First Class), Gandhidham, in Criminal Case No.2336 of 1986, whereby the respondents-original accused were acquitted from the charges framed against them, for the offences punishable under Sections 7(i)(ii) read with 2(ia) (a)(b)(c)(1)(m) read with 16(1)(a)(i) and 16(1A)(i)(ii) of the Prevention of Food Adulteration Act,1954 ('Act' for short).

As per the prosecution case, complainant, Mr. J.M. Tekwani, who, at the relevant time, was discharging his duties as Food Inspector, in Gandhidham Municipality, visited the shop of respondents Nos. 1 and 2 on January 8,1986, at about 4 p.m., and drew samples of ground-nut oil from the packed and sealed tin. Complainant, Mr. Tekwani, collected sample of ground-nut oil in three

clean and dry bottles and sealed the same in presence of panch witness, Ishwarlal Tulchand. It is further case of the prosecution that the said samples were sealed as per the provisions of the Prevention of Food Adulteration Rules, 1955 ("Rules" for short). At the time drawing samples, respondent No.1 had produced a bill, which showed that respondent No.1 had purchased the said tins of ground-nut oil from respondent No.4, M/s. Giriraj Sales Corporation. As per the bill, respondent No.1 had purchased ground-nut oil tins on January 17, 1986 from respondent No.4. It is the case of the prosecution that one sample bottle was sent for analysis to the public analyst by a registered parcel. The complainant received the report of the public analyst on March 1, 1986, and, as per the report, the sample of ground-nut oil was found to be adulterated. Therefore, the complainant obtained consent of the local health authority, and, thereafter, filed a complaint in the court of the learned Judicial Magistrate, First Class, at Gandhidham, which was registered as Criminal Case No.2336 of 1986.

Summons came to be served on the respondents. In order to prove the case, the complainant was examined at Exh.45. No other witness was examined by the prosecution. After recording of the evidence of the complainant, charge for the offences punishable under Sections 7(i)(ii) read with 2(ia) (a)(b)(c)(1)(m) read with 16(1)(a)(i) and 16(1A)(i)(ii) of the Act, was framed against the respondents. The charge was read over and explained to the respondents. The respondents did not plead guilty to the charge and claimed to be tried. The prosecution led oral as well documentary evidence against the respondents to substantiate the charge. After recording of evidence of prosecution witness was over, further statement of the respondents was recorded under Section 313 of the Code of Criminal Procedure, 1973. In their statement, the respondents denied the case of the prosecution. The respondents Nos. 1 and 2, in their further statements, stated that they were not served with copy of the report of the public analyst as per the provisions of Section 13(2) of the Act. According to respondents Nos. 1 and 2, they had purchased packed oil tins from respondents Nos. 3 and 4 and, therefore, they cannot be held responsible for the contravention of the Act and the Rules. Respondents Nos. 3 and 4 stated in their further statements that the report of the public analyst was received by the brother of respondent No.3, as respondent No.3 was out of station. It is further stated by respondent No.3 that his brother had applied before the learned Judicial Magistrate (First Class), Gandhidham, to sent the sample to the Central Food

Laboratory for analysis. But the said request was turned down by the learned Magistrate.

On appreciation of the oral as well as documentary evidence, and after hearing learned counsel for both the parties, the learned Judicial Magistrate, by his judgment and order dated March 8, 1990, recorded the following findings:

- (i) Respondents Nos. 1 and 2 cannot be held liable for contravention of the offences under the Act, because they were ignorant of the nature, substance or quality of food sold by them, and that they had purchased ground-nut oil from respondent No.3 and 4.
- (ii) Complainant, Mr. Tekwani, had committed breach of Rule 16 of the Rules, which is mandatory and which provides for taking and sealing of sample.
- (iii) There was breach of Rule 17 of the Rules, as the sample was not sent immediately to the public analyst on the next working day.
- (iv) The complainant, while taking samples of ground-nut oil, had committed breach of Rule 14, as he had not collected sample in clean and dry bottles.
- (v) There was non-compliance of the provisions of Section 13(2) of the Act, as no opportunity was afforded to the respondents of sending and getting tested the sample by the Central Food Laboratory.

On the basis of the above referred findings and conclusions, the learned Judicial Magistrate acquitted the respondents by the impugned judgment, giving rise to the present appeal.

Mr. L.R.Pujari, learned Additional Public Prosecutor, has taken me through the evidence of the prosecution. The learned APP submitted that the learned Judicial Magistrate has erred in not appreciating the evidence of Food Inspector, Mr. Tekwani, whose evidence has proved beyond doubt that he had collected sample as per the provisions of the Act and the Rules. It is further submitted that the sample, which was collected, was immediately sent to the public analyst on the next working day and the complainant had not committed breach of any of the provisions of the Rules. It is further submitted that the sample, which was collected and which was analysed by the public analyst, was found to be adulterated as per the report of the public analyst.

The evidence of complainant, Mr. Tekwani, is full of contradictions. The evidence of Tekwani does not establish that he had collected sample of ground-nut oil

in clean and dry bottles. There is no positive evidence on the record of the case that the complainant used clean and dry bottles, while taking sample of ground-nut oil. Therefore, in my opinion, there was clear breach of Rule 14 of the Rules. The evidence produced on the record of the case does not show that copy of the report of the public analyst was sent to respondents Nos. 1 and 2. Copy of report of the public analyst was sent to respondents Nos. 3 and 4, which was received by the brother of respondent No.3. An application, Exh.3, was therefore given by the brother of respondent No.3 to the learned Judicial Magistrate with a request to send sample for analysis to the Central Food Laboratory, which was turned down by the learned Judicial Magistrate, on the ground that the application was given after 10 days. In this connection, a reference requires to be made to the decision of this Court in the case of Mansingh Chhajuram Yadav vs State of Gujarat, in Criminal Revision Application No.428 of 1980, decided on February 22,1985, wherein it is held that, even if the application is filed beyond lapse of time, the court should not refuse to send sample for analysis, simply because the request was made after ten days. A reference is also required to be made to the decision of the Apex Court in the case of Rameshwar Dayal vs. State of U.P. reported in 1996 Supreme Court Cases (Cri) 75, wherein it is held that non-supply of report of the public analyst to the accused has caused serious prejudice to him, and no conviction can be passed in case where non-supply of report of the public analyst is found. It is further held that, under the provisions of Section 13(2) of the Act, valuable right is given to the accused. If there is breach of Section 13(2) of the Act, and when it causes serious prejudice to him, no conviction can be passed. In the present case, there is no positive evidence that the report of the public analysis was served upon respondents Nos. 1 and 2. Even if it is held that the said report was served on respondent No.3, the learned Judicial Magistrate has erred in rejecting the application given by the brother of respondent No.3 with a request to send sample to the Central Food Laboratory. Therefore, it can be held, in the facts and circumstances of the case, that there was non-compliance of Section 13(2) of the Act, which has caused serious prejudice to the accused.

Submission of learned APP, Mr. Pujari, that the evidence of complainant, Mr. Tekwani, is truthful and reliable, is simply stated to be rejected. The evidence of Mr. Tekwani does not establish that he had sent sample to the public analyst immediately on the next working day. As per the evidence of Mr. Tekwani, he had collected

samples on January 18, 1986, and had sent the same to the public analyst on January 20, 1986. As per his evidence, the sample, which was sent on January 20, 1986 was broken in transit and, therefore, he had collected another sample from the local health authority and sent it to the public analyst. The report of the public analyst, Exh.60-A, shows that the sample sent by Mr. Tekwani was received by the public analyst on February 10, 1986, and it was not as per the amended provisions of Rules 15 and 17 of the Rules. In my opinion, the sample, which was collected on January 18, 1986, was sent to the public analyst as late as on February 10, 1986 and, therefore, there was breach of Rule 17 of the Rules. In view of the aboveresferred conclusion, in my opinion, complainant, Mr. Tekwani, had not drawn sample of ground-nut oil as per the mandatory provisions of Rule 14 and had committed breach of Rule 17, in not sending to the public analyst on the very next working day. There was also non-compliance of Section 13(2) of the Act, as the respondents have not been afforded an opportunity, as requested by them, to send sample to the Central Food Laboratory for analysis. In view of the above, it cannot be held that the prosecution had proved the offences with which the respondents were charged.

This is an acquittal appeal in which the court would be slow to interfere with the order of acquittal. Infirmities in the prosecution case go to the root of the matter and strike a vital blow on the prosecution case. In such a case, it would not be safe to interfere with the order of acquittal more particularly when the evidence has not inspired confidence of the learned Judge who had an advantage of observing demeanour of witness. On overall appreciation of evidence, I am satisfied that there is no infirmity in the reasons assigned by the learned Judge for acquitting the respondent. Suffice it to say that the learned Judge has given cogent and convincing reasons for acquitting the respondent and the learned Additional Public Prosecutor has failed to dislodge the reasons given by the learned judge in order to convince us to take the view contrary to the one already taken by the learned Judge. Therefore, the acquittal appeal deserves to be rejected.

For the foregoing reasons, I do not find any substance in the appeal. The appeal, therefore, fails and is dismissed.

(swamy)
